

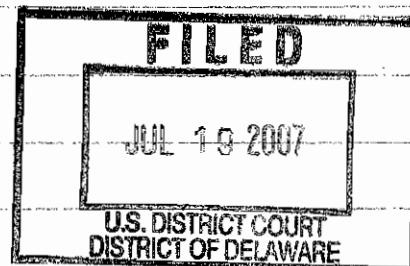
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

KEVIN C. BRATHWAITE
Plaintiff

v.

C.A. #04-1542 - G.M.S.

MARCELLO RISPOLI, et al.,
defendants



PLAINTIFF'S Reply to oppose
SUMMARY Judgment,
and proceed to trial

COMES NOW, the Plaintiff, Kevin C. Brathwaite, to oppose the defendants motion for summary judgment and request to proceed to trial.

To support this brief this Plaintiff offers the following:

1. The defendants state that their Motion for summary judgment is

supported by rule 56 (c), simply because this Plaintiff is unable to secure affidavits from the numerous witnesses that will testify to the facts of this case. These witnesses are all Correctional officers. This Plaintiff was unable to secure depositions from these witnesses, and the only way the facts of this case can be proven by this Plaintiff is through witness testimony. During this Plaintiff's deposition he did in fact give a list of these witnesses. This Plaintiff's efforts to get access to these witnesses is being manipulated and he cannot secure affidavits from these witnesses due to the fact that he is being kept away from these witnesses. In the interest of justice, these witnesses must be heard or at the very minimum be deposed or give affidavits to someone other than these defendants attorney or any other state employee.

How CAN this Plaintiff be expected to produce evidence if all of his efforts are being sabotaged. AS previously stated, Pursuant to the department of Corrections polices and procedures of protocol, ALL officers present during any incident is required to Submitt an incident report.

This Plaintiff attempted to secure these reports through discovery. But he WAS told that the officers present did not submitt incident reports. The officers that this Plaintiff attempted to secure incident reports, affidavits and or testimony from are as follows:

SGT. BOSTON

c/o TROXLER

c/o VERNON

c/o Lombardi

c/o Dodato

c/o chesney

c/o TURNER

c/o STEVENS

c/o Layton

IN FACT, this Plaintiff wrote

letters to each individual officer requesting to speak to them and secure affidavits from them.

All of these letters were signed and mailed to each officer by the building supervisor.

See exhibits, A - I. This Plaintiff made every effort to contact these witnesses.

2. Wallace & Stevenson - Assault

The allegations made regarding the razor are absolutely ridiculous. As previously stated and never denied by the defendants. The razors are given to every inmate every Tuesday and Saturday between 8:00 A.M - 8:30 A.M and are all collected at lunch time.

So if the razor is going to be collected, why would this Plaintiff have the razor in his underwear? This Plaintiff has been using these razors to shave twice per week every week for over six years and has never been

ACCUSED OF TRYING TO KEEP, OR
NOT RETURNING A RAZOR. AND WHEN
THIS INCIDENT TOOK PLACE THIS PLAINTIFF
HAD SOAP ON HIS HEAD AND FACE
BECAUSE HE WAS USING THE RAZOR
TO SHAVE. SO THERE IS ABSOLUTELY
NO WAY HE COULD HAVE HAD THE
RAZOR IN HIS UNDERWEAR. FURTHERMORE,
ALL OF THIS PLAINTIFF'S UNDERWEAR,
TEE SHIRTS AND SOCKS WERE ALL
PURCHASED FROM THE COMMISSARY
AT THE FACILITY. AND THE COMMISSARY
DOES NOT SELL UNDERWEAR WITH
POCKETS. SO WHEN THEY SAY THAT
THE UNDERWEAR HAD A POCKET,
IT WAS A LIE.

AS FOR THE AFFIDAVIT OF C/O
GREGORY TURNER, HIS AFFIDAVIT
WAS VAGUE AND EVASIVE. BUT
AT THE SAME TIME IT GIVES MORE
SUPPORT TO THE ALLEGATIONS MADE
BY THIS PLAINTIFF. C/O TURNER'S
AFFIDAVIT WAS EXACTLY FOUR
SENTENCES. A FAR CRY FROM THE
FICTITIOUS TALE TOLD BY DEFENDANTS,
WALLACE AND STEVENSON'S AFFIDAVITS.

IN TURNERS AFFIDAVIT HE STATES THAT PLAINTIFF WAS BEING CONFRONTATIONAL. THE CONFRONTATION WAS NOT PHYSICAL, IT WAS VERBAL, JUST AS STATED BY THIS PLAINTIFF IN THE ORIGINAL COMPLAINT, WHEN HE STATED THAT HE CONTINUOUSLY REQUESTED THAT A LIEUTENANT BE PRESENT DURING THIS SHAKEDOWN BY WALLACE, BECAUSE HE HAD PROBLEMS WITH WALLACE IN THE PAST. AT NO POINT IN TURNERS AFFIDAVIT DID HE EVER STATE THAT THIS PLAINTIFF ASSAULTED OR EVEN ATTEMPTED TO ASSAULT ANYONE AS CLAIMED BY WALLACE AND STEVENSONS FALSE REPORTS AND AFFIDAVITS. THE REASON C/O TURNER NEVER MAKES THE CLAIM IN HIS AFFIDAVIT IS BECAUSE THIS PLAINTIFF WAS NEVER THE AGGRESSOR IN THIS MATTER. THE ONLY CONFRONTATION ~~WAS~~ BY THIS PLAINTIFF WAS A VERBAL CONFRONTATION, BECAUSE HE WAS BEING ADAMANT ABOUT NEEDING THE LIEUTENANT TO BE PRESENT WHILE WALLACE WAS SHAKING HIM DOWN BECAUSE HE WANTED TO AVOID BEING

Mistreated by Wallace, as he is known to do. Also, in Turners AFFIDAVIT, it's very clear that he leaves out a lot of the details of this incident. So there are too many unanswered questions that needs answers. The main question that needs to be asked is, who physically assaulted this plaintiff while he was on the floor shackled and handcuffed. To fairly delegate this matter, these questions can only be answered under oath. If Turner, or any of these other witnesses is asked under oath, if this plaintiff was assaulted while he was on the floor handcuffed and shackled, there is only one answer, "YES". If asked, did this plaintiff ever resist, there is only one answer, "No". A verbal confrontation is not resisting.

3. MEDICAL

These defendants are trying to

MINIMIZE THE INJURIES THAT THIS PLAINTIFF SUFFERED AS A RESULT OF THIS ASSAULT. NURSE, BRENDA HOLWERDA CONTACTED THE SHIFT COMMANDER TO HAVE PICTURES TAKEN OF THIS PLAINTIFF'S INJURIES AS THIS PLAINTIFF REQUESTED. THE VERY NEXT DAY NURSE, ELLEN ALSO CONTACTED THE SHIFT COMMANDER TO TAKE PICTURES OF THIS PLAINTIFF'S INJURIES. THESE INJURIES WERE A RESULT OF BEING ASSAULTED WHILE HANDCUFFED AND SHACKLED, NOT BEING SUBDUED. THIS FACT CAN BE PROVEN THROUGH WITNESS TESTIMONY.

4. Carpenter, Rispoli, & Dunn

Defendant Carpenter claims that this plaintiff failed to submit any evidence contravening Carpenter's affidavit or any documentation supporting his allegations, and that he simply relies on the "testimony of other officers". If all of this plaintiff's attempts to secure affidavits and documentation have

been curbed by the defendants and their allies, and the testimony of other officers brings clarity to this matter, then the testimony of other "honest officers" should be sufficient and welcomed, if it will expose the civil, criminal and moral turpitude of these defendants. Defendant Rispoli claims that, it's curious that this plaintiff was able to identify him during the assault that took place on Oct, 22nd, 04, but was unable to identify any of the other three officers that were involved. This plaintiff knows who Rispoli is and has no reason to make an accusation against Rispoli if it were not true. In fact, up until this assault took place, this plaintiff thought he had a fairly decent line of mutual respect and common courtesy with Rispoli. But he clearly misjudged Rispoli. The other three officers were unknown to this plaintiff. If he knew who these other

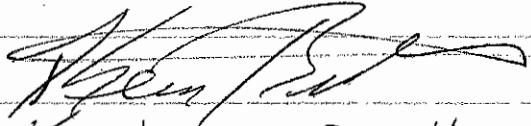
officers were, they would have definitely been listed as defendants.

5. The affidavits attached to the first answering brief, Exhibits A-D, clearly shows a pattern of defendant Wallace's practice of assaulting inmates while they are shackled and handcuffed. And should be given great weight and consideration in determining prior bad acts, and the clear comparisons to the assault that took place on Oct, 9th, 2007.

6. The arguments contained in this plaintiff's answering brief are factual and this plaintiff can positively identify the assailants that assaulted him and caused injury. Immunity does not apply.

7. Testimony Needed to establish the truth. See: 934 F.Supp. 127
EVANS V. HENNESSY (D-Del 1986)

Wherefore, This Plaintiff
request that this honorable
Court deny the defendant's Motion
for summary judgment and
allow this case to proceed to
trial.


Kevin C. Brathwaite
1181 Paddock Rd.
Smyrna DE.

19977

DATED: July, 17th, 2007

TO: SGT. BOSTON

FROM: Kevin C. Brathwaite #315294

RE: Incident on Oct, 9th, 2007

DATE: March, 7th, 2007

SGT. BOSTON,

I need to speak to you about the incident that took place in Bldg #17, on Oct, 9th, 2007 and discuss the possibility of getting an affidavit from you.

I am currently housed in Bldg #17-B-2-8. So would you please come to my unit to discuss this matter.

RECEIVED AND ANSWERED Sincerely
By SGT Clay on 3/17/07

E.C.
file

Exhibit - A

TO: c/o Troxler

From: Kevin C. Brathwaite #315294

RE: Incident on Oct, 9th, 2004

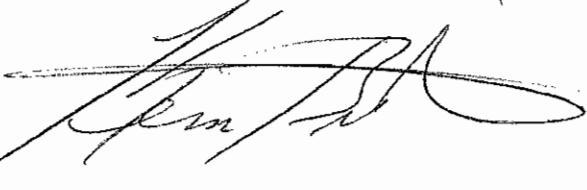
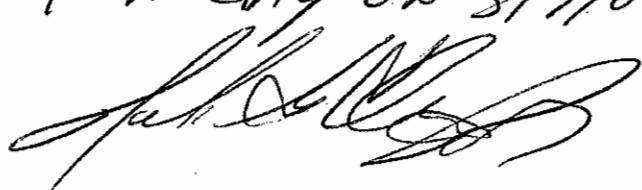
DATE: March, 7th, 2007

c/o Troxler,

I need to speak to you about the incident that took place in Bldg #17, on Oct, 9th, 2004 and discuss the possibility of getting an affidavit from you. I am currently housed in Bldg #17 B-L-8. So would you please come to my unit to discuss this matter.

Received and read
By SGT Clay on 3/17/07

Sincerely



C.C.
file

Exhibit-B

To: c/o Vernon

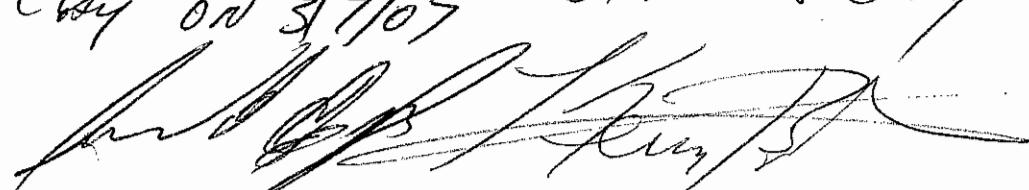
From: Kevin C. Brathwaite #315294

RE: Incident on Oct, 9th, 2004

DATE: March, 7th, 2007

c/o Vernon

I need to speak to you about the incident that took place in Bldg #17, on Oct, 9th, 2004 and discuss the possibility of getting an affidavit from you. I am currently housed in Bldg #17-B-L-8. So would you please come to my unit to discuss this matter.

Received and mailed
By SGT Clay on 3/7/07 Sincerely


C.C.
File

Exhibit - C

To: c/o Lombardi

FROM: Kevin C. Brathwaite #315294

RE: Incident on Oct, 9th, 2004

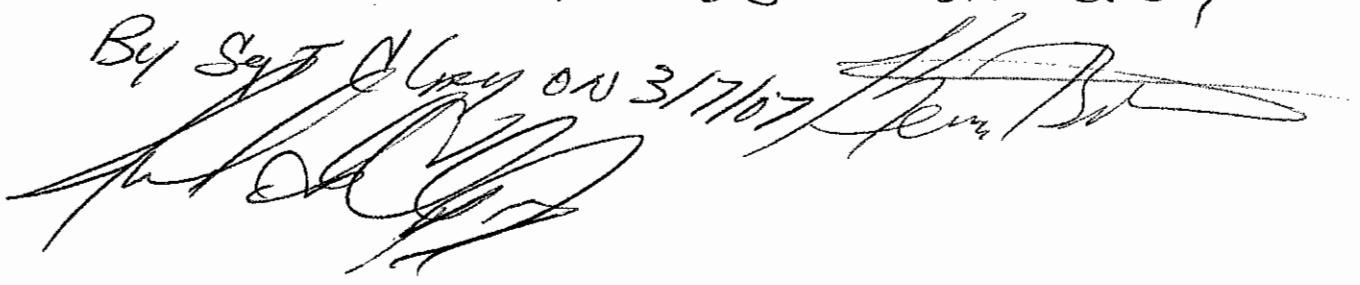
DATE: March, 7th, 2007

c/o Lombardi,

I need to speak to you about the incident that took place in Bldg #17, on Oct, 9th, 2004 and discuss the possibility of getting an affidavit from you. I am currently housed in Bldg #17-B-L-8. So would you please come to my unit to discuss this matter.

Received and made Sincerely

By Sgt Gray on 3/17/07 KCB



C.C.
File

Exhibit-D

To: C/o Dodato

FROM: Kevin C. Brathwaite #315294

RE: Incident on Oct, 9th, 2004

DATE: March, 7th, 2007

C/o Dodato,

I need to speak to you about the incident that took place in Bldg #17, on Oct, 9th, 2004, and discuss the possibility of getting an affidavit from you. I am currently housed in Bldg #17-B-L-8. So would you please come to my unit to discuss this matter.

RECEIVED AND MAILED BY

Sgt Clay on 3/17/07



Sincerely



c.c.
File

Exhibit-E

To: c/o chesney

From: Kevin C. Brathwaite #315294

RE: Incident on Oct, 9th, 2004

DATE: March, 7th, 2007

c/o chesney,

I Need to speak to you about the incident that took place in Bldg #17, on Oct, 9th, 2004 and discuss the possibilities of getting AN AFFIDAVIT from you. I am currently housed in Bldg # 17-B-C-8. So should you please come to my unit to discuss this MATTER.

RECEIVED AND MAILED
By SGT Clay on 3/7/07

Sincerely



C.C.

File

Exhibit-F

TO: C/O TURNER

FROM: Kevin C. Brathwaite #315294

RE: INCIDENT ON OCT, 9TH, 2004

DATE: MARCH, 7TH, 2007

C/O TURNER,

I NEED TO SPEAK TO YOU ABOUT THE INCIDENT THAT TOOK PLACE IN BLDG #17, ON OCT, 9TH, 2004 AND DISCUSS THE POSSIBILITY OF GETTING AN AFFIDAVIT FROM YOU.

I AM CURRENTLY HOUSED IN BLDG #17# B-L-8. SO WOULD YOU PLEASE COME TO MY UNIT TO DISCUSS THIS MATTER.

RECEIVED AND MAILED BY SINCERELY
Sgt Clay 07/17/07

for LCL

Jerry B

C.C.
File

Exhibit-G

To: C/O STEVENS

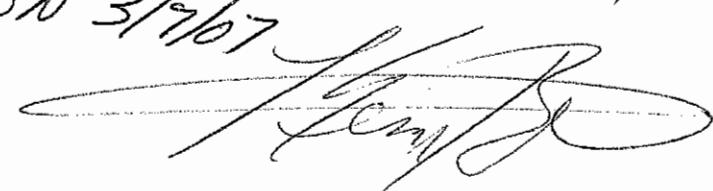
From: Kevin C. Brathwaite #315294

RE: Incident on Oct, 9th, 2004

DATE: March, 7th, 2007

C/O STEVENS,

I need to speak to you about the incident that took place in Bldg # 18, on Oct, 9th, 2004 and discuss the possibility of getting an affidavit from you. I AM currently housed in Bldg # 17 - B-L-8. So would you please come to my unit to discuss this matter.

Received and made
by S. T. Clay on 3/26/07 Sincerely
for [redacted] 

C.C.

File

Exhibit-H

TO: C/O LAYTON

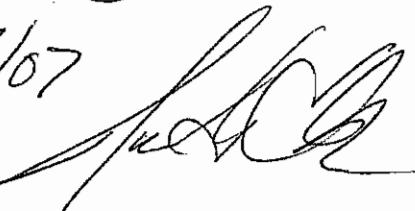
FROM: Kevin C. Brathwaite #315294

RE: Incident on OCT, 9th, 2004

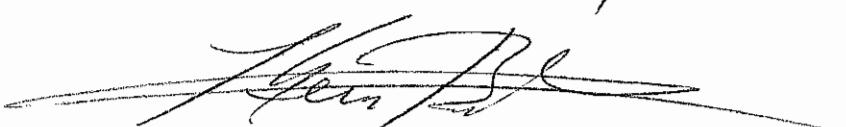
DATE: MARCH, 7th, 2007

C/O LAYTON,

I need to speak to you about the incident that took place in Bldg # 18, on OCT, 9th, 2004 and discuss the possibility of getting an affidavit from you. I am currently housed in Bldg # 17-B-C-8. So would you please come to my unit to discuss this matter.

RECEIVED AND MAILED BY SGT Chay
ON 3/7/07 

Sincerely



C.C.

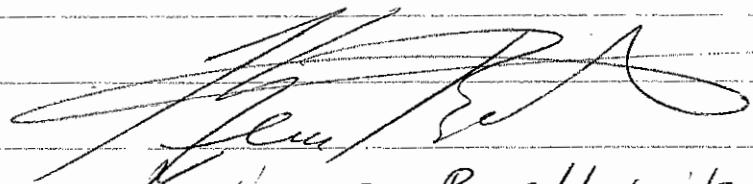
file

Exhibit - I

Certificate of Service

I Kevin C. Brathwaite, states
that I have caused A copy of
the attached second reply to
oppose summary judgment to be
mailed to the following party
by way of the U.S. Postal
Service.

Ophelia Waters, Esq.
Atty Gen office
820 N. French St.
Wilmington De.
19801



Kevin C. Brathwaite
1181 Paddock Rd.
Smyrna DE.

19877

DATED: July, 17th, 2007

INM KEVIN C. BROTHWAITE
SB# 315294 UNIT _____
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977



UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
844 N. KING ST Lockbox - 18
WILMINGTON DE
19801